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OBSERVATIONS

UPON THE PRESENT

GOVERNMENT

OF

PENNSYLVANIA.

IN

FOUR LETTERS

TO THE

PEOPLE OF PENNSYLVANIA.

"A Republic (as it is an empire of laws and not of men) is the BEST of governments; and that arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the BEST of republics."

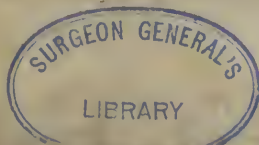
ADAMS on Government.

"Nothing is more certain from the history of nations, and the nature of man, than that SOME FORMS of government are better fitted for being WELL ADMINISTERED than others."

IDEM.

PHILADELPHIA:

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OBSERVATIONS, &c.

LETTER I.

EVERY free government should consist of three parts, viz. I. A BILL OF RIGHTS. II. A CONSTITUTION. And III. LAWS.

I. The BILL OF RIGHTS should contain the great principles of *natural* and *civil liberty*. It should be unalterable by any human power.

II. The CONSTITUTION is the executive part of the Bill of Rights. It should contain the division and distribution of the power of the people.---The modes and forms of making laws, of executing justice, and of transacting business: Also the limitation of power, as to time and jurisdiction. It should be unalterable by the legislature, and should be changed only by a representation of the people, chosen for that purpose.

III. LAWS are the executive part of a constitution. They cease to be binding whenever they transgress the principles of Liberty, as laid down in the Constitution and Bill of Rights.

Let us now apply these principles to the Bill of Rights, Constitution and Laws of Pennsylvania. But previous to my entering upon this task, I beg leave to declare, that I am not led to it by a single party or personal prejudice; on the contrary, I honour most of the friends of the present government as the warmest Whigs among us, and I am proud of numbering several of the gentlemen who were concerned in making, and in attempting to execute the government, among my particular friends.

I. The Bill of Rights has confounded *natural* and *civil* rights in such a manner as to produce endless confusion in society.

II. The Constitution in the gross is exceptionable in the following particulars:

1. No regard is paid in it to the ancient habits and customs of the people of Pennsylvania in the distribution of the supreme power of the state, nor in the forms of business, or in the stile of the Constitution. The suddenness of the late revolution, the attachment of a large body of the people to the old Constitution of the state, and the general principles of human nature made an attention to ancient forms and prejudices a matter of the utmost importance to this state in the present controversy with Great-Britain. Of so much consequence did the wise Athenians view the force of ancient habits and customs in their laws and government, that they punished all *strangers* with death who interfered in their politics. They well knew the effects of novelty upon the minds of the people, and that a more fatal stab could not be

given to the peace and safety of their state than by exposing its laws and government to frequent or *unnecessary* innovations.

2. The Constitution is wholly repugnant to the principles of action in man, and has a direct tendency to check the progress of genius and virtue in human nature. It supposes perfect equality, and an equal distribution of property, wisdom and virtue, among the inhabitants of the state.

3. It comprehends many things which belong to a Bill of Rights, and to Laws, and which form no part of a Constitution.

4. It is contrary, in an important article, to the Bill of Rights. By the second article of the Bill of Rights, "no man can be abridged of any *civil* right, who acknowledges the being of a GOD;" but by the Constitution, no man can take his seat in the Assembly, who does not "acknowledge the Scriptures of the Old and New Testament to be given by divine inspiration."

5. It is deficient in point of perspicuity and method. Instead of reducing the legislative, executive and judicial parts of the constitution, with their several powers and forms of business, to distinct heads, the whole of them are jumbled together in a most unsystematic manner.

6. It fixes all these imperfections upon the people for seven years, by precluding them from the exercise of their own power to remove them at any other time, or in any other manner than by a septennial convention, called by a Council of Censors.

III. The laws and proceedings of the Assembly of Pennsylvania are in many particulars contrary to the constitution. Only one half of the Members took the oath of allegiance, prescribed in the tenth section of the constitution. The Speaker of the House issued writs for the election of Members of Assembly and of Counsellors, notwithstanding this power is lodged, by the 19th section of the constitution, *only* in the President and Council. Two gentlemen were appointed Members of Congress, who held offices under the Congress, which is expressly forbidden in the 11th section of the constitution. The constitution requires further in the 40th section, that every military officer should take the oath of allegiance, before he enters upon the execution of his office; but the Assembly have dispensed with this oath in their Militia Law. The 15th section of the constitution declares, that no law shall be passed, unless it be previously published for the consideration of the People; but the Assembly passed all the laws of their late session, without giving the People an opportunity of seeing them, till they were called upon to obey them. These proceedings of the Assembly lead to one, and perhaps to all the three following conclusions: First, That the Assembly have violated the principles of the constitution; secondly, that the constitution is so formed, that it could not be executed by the Assembly, consistent with the safety of the State; lastly, that none of their laws are binding, inasmuch as they are contrary to the superior and radical laws of the constitution. These considerations are all of a most alarming nature. Farewel to Liberty, when the sacred bulwarks of a constitution can be invaded by a legislature! And if the constitution cannot be executed in all its parts,

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without endangering the safety of the State, and if all our late laws must be set aside in a court of justice, because they were not assented to by the People, previous to their being enacted, is it not high time for the People to unite and form a more effectual, and more practicable system of government?---

If strict justice should poise the scale in the trial of tory property, I can easily foresee from the virtue of the People, on which side the beam would turn; but it becomes us to reflect, that all trials for forfeited property must be held in courts of *written* law, and the flaws of our constitution and laws are so wide, that the most gigantic Tory criminal might escape through them.

LETTER II.

I SHALL now proceed to say a few words upon particular parts of the Constitution.

In the second section, "the supreme legislature is vested in a '*single*' House of Representatives of the Freemen of the Commonwealth." By this section we find, that the supreme, absolute, and uncontrouled power of the whole State is lodged in the hands of *one body* of men. Had it been lodged in the hands of one man, it would have been less dangerous to the safety and liberties of the community. Absolute power should never be trusted to man. It has perverted the wisest heads, and corrupted the best hearts in the world. I should be afraid to commit my property, liberty and life to a body of angels for one whole year. The Supreme Being alone is qualified to possess supreme power over his creatures. It requires the wisdom and goodness of a Deity to controul, and direct it properly.

In order to shew the extreme danger of trusting all the legislative power of a State to a single representation, I shall beg leave to transcribe a few sentences from a letter, written by Mr. JOHN ADAMS, to one of his friends in North-Carolina, who requested him to favour him with a plan of government for that State above a twelve-month ago. This illustrious Citizen, who is second to no man in America, in an inflexible attachment to the liberties of this country, and to republican forms of government, writes as follows,

"I think a people cannot be *long free*, nor *ever* happy, whose government is in one Assembly. My reasons for this opinion are as follow,

1. "A single Assembly is liable to all the vices, follies and frailties of an individual,---subject to fits of humour,---starts of passions,* flights of enthusiasm,---partialities of prejudice, and consequently productive

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* *A Committee of the Convention, which formed the Constitution of Pennsylvania, published in the Pennsylvania Packet of October 15, 1776, as an apology for one of their Ordinances, that was thought to be arbitrary and unjust, that it was passed when "the minds of the Convention were agitated, and their passions inflamed."*

ductive of hasty results and absurd judgments. All these errors ought to be corrected, and defects supplied by some controuling power.

2. "A single Assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, upon its constituents.

3. "A single Assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. This was one fault of the long parliament, but more remarkably of Holland, whose Assembly first voted themselves from *annual* to *septennial*, then for *life*, and after a course of years, that all vacancies happening by death or otherwise, should be filled by *themselves*, without any application to constituents at all.

4. "Because a single Assembly possessed of all the powers of government would make arbitrary laws for their own interest, and adjudge all controversies in their own favor."†

If any thing could be necessary upon this subject, after such an authority, I might here add, that Montesquieu---Harrington---Milton---Addison---Price---Bolingbroke, and others, the wisest statesmen, and the greatest friends to Liberty in the world, have left testimonies upon record of the extreme folly and danger of a people's being governed by a single legislature. I shall content myself with the following extract from the last of those authors. The sentiments correspond exactly with those of our countryman before-mentioned.

"By simple forms of government, I mean such as lodge the whole supreme power, absolutely and without controul, either in a single person, or in the principal persons of the community, or in the whole body of the people. Such governments are governments of arbitrary will, and therefore of all imaginable absurdities the most absurd. They stand in direct opposition to the sole motive of submission to any government whatsoever; for if men quit the State, and renounce the rights of nature, (one of which is, to be sure, that of being governed by their own will) they do this, that they may not remain exposed to the arbitrary will of other men, the weakest to that of the strongest, the few to that of the many. Now, in submitting to any single form of government whatever, they establish what they mean to avoid, and for fear of being exposed to arbitrary will sometimes, they choose to be governed by it always. These governments do not only degenerate into tyranny; they are tyranny in their very institution; and they who submit to them, are slaves, not subjects, however the supreme power may be exercised; for tyranny and slavery do not so properly consist in the

† *These reasons are given by our Author for not lodging all power legislative, executive and judicial, in one body of men. This has been done, as will be shewn hereafter in the Constitution of Pennsylvania: But, supposing it had been otherwise, our Author adds, "shall the whole power of legislation rest in one Assembly? Most of the foregoing reasons (one is omitted) apply equally to prove, that the whole legislative power ought to be more complex."*

the stripes that are given and received, as in the power of giving them at pleasure, and the necessity of receiving them, whenever and for whatever they are inflicted."

I might go on further and shew, that all the dissensions of Athens and Rome, so dreadful in their nature, and so fatal in their consequences, originated in single Assemblies possessing all the power of those commonwealths; but this would be the business of a volume, and not of a single essay.---I shall therefore pass on, to answer the various arguments that have been used in Pennsylvania, in support of a single legislature.

1. We are told, that the perfection of every thing consists in its simplicity,---that all mixtures in government are impurities, and that a single legislature is perfect, because it is simple.---To this I answer, that we should distinguish between simplicity in principles, and simplicity in the application of principles to practice. What can be more simple than the principles of mechanics, and yet into how many thousand forms have they been tortured by the ingenuity of man. A few simple elementary bodies compose all the matter of the universe, and yet how infinitely are they combined in the various forms and substances which they assume in the animal, vegetable, and mineral kingdoms. In like manner a few simple principles enter into the composition of all free governments. These principles are perfect security for property, liberty and life; but these principles admit of extensive combinations, when reduced to practice:---Nay more, they require them. A despotic government is the most simple government in the world, but instead of affording security to property, liberty or life, it obliges us to hold them all on the simple will of a capricious sovereign. I maintain therefore, that all governments are safe and free in proportion as they are compounded in a certain degree, and on the contrary, that all governments are dangerous and tyrannical in proportion as they approach to simplicity.

2. We are told by the friends of a single legislature, that there can be no danger of their becoming tyrannical, since they must partake of all the burdens they lay upon their constituents. Here we forget the changes that are made upon the head and heart by arbitrary power, and the cases that are recorded in history of *annual* Assemblies having refused to share with their constituents in the burdens which they had imposed upon them. If every elector in Pennsylvania is capable of being elected an assembly-man, then agreeably to the sixth section of the constitution, it is possible for an Assembly to exist who do not possess a single foot of property in the State, and who can give no other evidence of a common interest in, or attachment to, the community than having paid "public taxes," which may mean poor-taxes. Should this be the case, (and there is no obstacle in the constitution to prevent it) surely it will be in the power of such an Assembly to draw from the State the whole of its wealth in a few years, without contributing any thing further towards it than their proportion of the trifling tax necessary to support the poor.---But I shall shew in another place
equal

equal dangers from another class of men, becoming a majority in the Assembly.

3. We are told of instances of the House of Lords, in England, checking the most salutary laws, after they had passed the House of Commons, as a proof of the inconvenience of a compound legislature. I believe the fact to be true, but I deny its application in the present controversy. The House of Lords, in England, possess privileges and interests, which do not belong to the House of Commons. Moreover they derive their power from the crown and not from the people. No wonder therefore they consult their own interests, in preference to those of the People. In the State of Pennsylvania we wish for a council, with *no one* exclusive privilege, and we disclaim every idea of their possessing the smallest degree of power, but what is derived from the *annual* suffrages of the People. A body thus chosen could have no object in view but the happiness of their constituents. It is remarkable in Connecticut, that the legislative council of that State has in no one instance made amendments, or put a negative upon the acts of their Assembly, in the course of above one hundred years, in which both have not appeared to the people in a few months to have been calculated to promote their liberty and happiness.

4. We are told, that the Congress is a single legislature, therefore a single legislature is to be preferred to a compound one.---The objects of legislation in the Congress relate only to peace and war, alliances, trade, the Post-Office, and the government of the army and navy. They never touch the liberty, property, nor life of the individuals of any State in their resolutions, and even in their ordinary subjects of legislation, they are liable to be checked by *each* of the Thirteen States.

5. We have been told, that a legislative council or governor lays the foundation for aristocratical and monarchical power in a community. However ridiculous this objection to a compound legislature may appear, I have more than once heard it mentioned by the advocates for a single Assembly. Who would believe, that the same fountain of pure water should send forth, at the same time, wholesome and deadly streams? Are not the Council and Assembly both formed alike by the *annual* breath of the people? But I will suppose, that a legislative Council aspired after the honors of hereditary titles and power, would they not be *effectually* checked by the Assembly?

I cannot help commending the zeal that appears in my countrymen against the power of a King or a House of Lords. I concur with them in all their prejudices against hereditary titles, honour and power. History is little else than a recital of the follies and vices of kings and noblemen, and it is because I dread so much from them, that I wish to exclude them for ever from Pennsylvania, for notwithstanding our government has been called a simple democracy, I maintain, that a foundation is laid in it for the most complete aristocracy that ever existed in the world.

In order to prove this assertion, I shall premise two propositions, which have never been controverted: First, where there is wealth,
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there will be power; and, secondly, the rich have always been an over-match for the poor in all contests for power.

These truths being admitted, I desire to know what can prevent our single representation being filled, in the course of a few years, with a majority of rich men? Say not, the people will not choose such men to represent them. The influence of wealth at elections is irresistible. It has been seen and felt in Pennsylvania, and I am obliged in justice to my subject to say, that there are poor men among us as prepared to be influenced, as the rich are prepared to influence them. The fault must be laid in both cases upon human nature. The consequence of a majority of rich men getting into the legislature is plain. Their wealth will administer fuel to the love of arbitrary power that is common to all men. The present Assembly have furnished them with precedents for breaking the Constitution. Farewel now to annual elections! Public emergencies will sanctify the most daring measures. The clamours of their constituents will be silenced with offices, bribes or punishments. An aristocracy will be established, and Pennsylvania will be inhabited like most of the countries in Europe, with only two sorts of animals, tyrants and slaves.

It has often been said, that there is but one rank of men in America, and therefore, that there should be only one representation of them in a government. I agree, that we have no artificial distinctions of men into noblemen and commoners among us, but it ought to be remarked, that superior degrees of industry and capacity, and above all, commerce, have introduced inequality of property among us, and these have introduced natural distinctions of rank in Pennsylvania, as certain and general as the artificial distinctions of men in Europe. This will ever be the case while commerce exists in this country. The men of middling property and poor men can never be safe in a mixed representation with the men of over-grown property. Their liberties can only be secured by having exact bounds prescribed to their power, in the fundamental principles of the Constitution. By a representation of the men of middling fortunes in one house, their *whole* strength is collected against the influence of wealth. Without such a representation, the most violent efforts of individuals to oppose it would be divided and broken, and would want that system, which alone would enable them to check that lust for dominion which is always connected with opulence. The government of Pennsylvania therefore has been called most improperly a government for poor men. It carries in every part of it a poison to their liberties. It is impossible to form a government more suited to the passions and interests of rich men.

6. But says the advocate for a single legislature, if one of the advantages of having a Legislative Council arises from the Counsellors possessing more wisdom than the Assembly, why may not the members of the Council be thrown into the Assembly, in order to instruct and enlighten them? If sound reasoning always prevailed in popular Assemblies, this objection to a Legislative Council might have some weight. The danger in this case would be, that the Counsellors would

partake of the passions and prejudices of the Assembly, by taking part in their debates; or, if they did not, that they would be so inconsiderable in point of numbers, that they would be constantly out-voted by the members of the Assembly.

7. But would you suffer twenty or thirty men in a Legislative Council to controul seventy or eighty in an Assembly? Yes, and that for two reasons: First, I shall suppose that they will consist of men of the most knowledge and experience in the State: Secondly, that their obligations to wisdom and integrity will be much stronger than the Assembly's can be, because fewer men will be answerable for unjust or improper proceedings at the bar of the public. But I beg pardon of my readers for introducing an answer to an objection to a small number of men controuling the proceedings of a greater. The friends of the present Constitution of Pennsylvania cannot urge this objection with any force, for in the 47th section of the Constitution I find twenty-four men called a COUNCIL of CENSORS, invested with a supreme and *uncontrolled* power to revise and to censure all the laws and proceedings of not a single Assembly, but of all the Assemblies that shall exist for seven years, which Assemblies may contain the united wisdom of five hundred and four Assembly-men. They are moreover, invested with more wisdom than the Convention that is to be chosen by their recommendation; for this Convention, which is to consist of seventy-two men, is to make no *one* alteration in the Constitution but what was suggested to them by the Council of Censors. I can easily conceive, that two houses consisting of an unequal number of members, both viewing objects through the same medium of time and place, may agree in every thing essential, and disagree in matters only of doubtful issue to the welfare of the state; but I am sure, a body of twenty-four men sitting in judgment upon the proceedings of a body of men defunct in their public capacity seven years before them, cannot fail of committing the most egregious mistakes from the obscurity which time, and their ignorance of a thousand facts and reasonings must throw upon all their deliberations. But more of the arbitrary power of the Censors hereafter.

8. We are told that the state of Pennsylvania has always been governed by a single legislature, and therefore, that part of our Constitution is not an innovation. There is a short way of confuting this assertion by pronouncing it without any foundation. The Governor always had a negative power upon our laws, and was a distinct branch of our legislature. It is true, he sometimes exercised his power to the disadvantage of the people; for he was the servant of a King who possessed an interest distinct from that of his people, and in some cases the Governor himself possessed an interest incompatible with the rights of the people. God forbid that ever we should see a resurrection of his power in Pennsylvania, but I am obliged to own, that I have known instances in which the *whole* state have thanked him for the interposition of his negative and amendments upon the acts of the Assembly. Even the Assembly-men themselves have acknowledged the justice of his conduct upon

upon these occasions, by condemning in their cooler hours their own hasty, and ill-digested resolutions.

9. But why all these arguments in favor of checks for the Assembly. The Constitution (says the single legislative-man) has provided no less than four for them. First, Elections will be annual. Secondly, The doors of the Assembly are to be always open. Thirdly, All laws are to be published for the consideration and assent of the people: And, Fourthly, The Council of Censors will punish, by their censures, all violations of the Constitution, and the authors of bad laws. I shall examine the efficacy of each of these checks separately.

I hope, for the peace of the state, that we shall never see a body of men in power more attached to the present Constitution than the present Assembly, and if, with all their affection for it, they have broken it in many articles, it is reasonable to suppose that future Assemblies will use the same freedoms with it. They may, if they chuse, abolish annual elections.† They may tell their constituents that elections draw off the minds of the people from necessary labour; or, if a war should exist, they may shew the impossibility of holding elections when there is a chance of the militia being called into the field to oppose a common enemy: Or lastly, they may fetter elections with oaths in such a manner as to exclude nine-tenths of the electors from voting. Such stratagems for perpetual power will never want men nor a *society* of men to support them; for the Assembly possesses such a plenitude of power from the influence of the many offices of profit and honour* that are in their gift, that they may always promise themselves support from a great part of the state. But I will suppose that no infringement is ever made upon annual elections. In the course of even one year a single Assembly may do the most irreparable mischief to a state. Socrates and Barnevelt were both put to death by Assemblies that held their powers at the election of the people. The same Assemblies would have shed oceans of tears to have recalled those illustrious citizens to life again, in less than half a year after they imbrued their hands in their blood.

I am highly pleased with having the doors of our Assembly kept constantly open; but how can this check the proceedings of the Assembly, when none but a few citizens of the town or county, where

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† *The late Convention was chosen for the sole purpose of making a government, and was composed of honest, well-meaning men, and yet, I have good authority to say, that several of them proposed to their friends forming themselves into an Assembly, to execute the government.*

* *The President is appointed chiefly by the Assembly. His salary, together with the salaries of the Judges, are fixed by the Assembly. Delegates in Congress, the Lieutenants and Sub-Lieutenants of counties, Protonotaries, Registers of Wills, Money-Signers, &c. &c. are all appointed solely by the Assembly. Each of these officers brings with him the influence of his friends and family-connections. When collected together, they make a little army of placemen.*

the Assembly sits, or a few travelling strangers, can ever attend or watch them?

I shall take no notice of the delays of business, which must arise from publishing all laws for the consideration and assent of the people; but I beg to be informed *how long* they must be published before they are passed? For I take it for granted, that each county has a right to equal degrees of time to consider of the laws. In what manner are they to be circulated? How are the sentiments of the people, scattered over a county fifty or sixty miles in extent, to be collected? Whether by ballot, or by voting in a tumultuary manner? These are insurmountable difficulties in the way of the people at large acting as a check upon the Assembly. But supposing an attempt should be made to restrain the single legislature in this manner, are we sure the disapprobation of the people would be sufficient to put a negative upon improper or arbitrary laws? Would not the Assembly, from their partiality to their own proceedings, be apt to pass over the complaints of the people in silence? to neglect or refuse to enter their petitions or remonstrances upon their Journals? or to raise the hue and cry of a fostered junto upon them, as "*tories*," or "*apostate whigs*," or "*an aristocratic section*?"

To talk of the Council of Censors, as a check upon the Assembly, is to forget that a man or a body of men may deceive, rob, and enslave the public for seven years, and then may escape the intended efficacy of the censures of the Council by death, or by flying into a neighbouring state.

10. We are informed that a single legislature was supported in the Convention by Dr. Franklin, and assented to by Mr. Rittenhouse; gentlemen distinguished for their uncommon abilities, and deservedly dear for their virtues to every lover of human nature. The only answer, after what has been said, that I shall give to this argument, is, that Divine Providence seems to have permitted them to *err* upon this subject, in order to console the world for the very great superiority they both possess over the rest of mankind in every thing else, except the science of government.

Thus have I answered all the arguments that ever I have heard offered in favour of a single legislature, and I hope, silenced all the objections that have been made to a double representation of the people. I might here appeal further to the practice of our courts of law in favour of repeated deliberations and divisions. In a free government, the most inconsiderable portion of our liberty and property cannot be taken from us, without the judgment of two or three courts; but, by the Constitution of Pennsylvania, the whole of our liberty and property, and even our lives, may be taken from us, by the hasty and passionate decision of a single Assembly.

I shall conclude my observations upon this part of the Constitution, by summing up the advantages of a compound or double legislature.

1. There is the utmost *freedom* in a compound legislature. The decisions

decisions of two legislative bodies cannot fail of coinciding with the wills of a great majority of the community.

2. There is *safety* in such a government, in as much as each body possesses a free and independant power, so that they mutually check ambition and usurpation in each other.

3. There is the greatest *wisdom* in such a government. Every act being obliged to undergo the revision and amendments of two bodies of men, is necessarily strained of every mixture of folly, passion, and prejudice.†

4. There is the longest *duration* of freedom in such a government.*

5. There is the most *order* in such a government. By order, I mean obedience to laws, subordination to magistrates, civility and decency of behaviour, and the contrary of every thing like mobs and factions.

6. Compound governments are most agreeable to *human nature*, inasmuch as they afford the greatest scope for the expansion of the powers and virtues of the mind. Wisdom, learning, experience, with the most extensive benevolence, the most unshaken firmness, and the utmost elevation of soul, are all called into exercise by the opposite and different duties of the different representations of the people.

L E T T E R I I I .

THE powers of government have been very justly divided into legislative, executive and judicial. Having discussed the legislative power of the government of Pennsylvania, I shall proceed now to consider the executive and judicial.

It is agreed on all hands that the executive and judicial powers of government should be *wholly independant* of the legislative. The authors of the Pennsylvania Constitution *seem* to have given their sanction to this opinion, by separating those powers from the powers of the Assembly.---It becomes us to enquire whether they have made them so independant of the Assembly as to give them the free exercise of their own judgments.

The insignificant figure the President and Council make in the Constitution

† *The Militia Law of the Delaware State received twenty-four amendments from the Council after it had had three readings in the Assembly; all of which were adopted at once by the Assembly. I grant, the wisdom of men collected in any way that can be devised, cannot make a perfect law; but I am sure a Legislative Council would not have overlooked many inaccuracies in the laws passed in the last session of the present Assembly of Pennsylvania.*

* *Sparta, which possessed a compound legislature, preserved her liberties above five hundred years. The fatal dissensions of Athens and Rome ceased as soon as their Senates, which were filled only with rich men, were checked by another Representation of the people.*

stitution from not having a negative upon the laws of the Assembly, alone would soon have destroyed their authority and influence in the State. But the authors of the Constitution have taken pains to throw the whole power of the Council at once into the hands of the Assembly, by rendering the former dependant upon the latter in the two following particulars,

1. The President is chosen by the joint ballot of the Assembly and Council. The Assembly being to the Council, in point of numbers, as five are to one, of course chuse the President. Each member will expect in his turn to fill the first chair in the State, and hence the whole Council will yield themselves up to the will of the Assembly.

2. The salaries of the President and of each of the Counsellors are fixed by the Assembly. This will necessarily render them dependant upon them. It is worthy of notice here, that a rotation is established in the 19th section of the Constitution, to "prevent the danger of an inconvenient aristocracy."---From what abuse of power can this aristocracy arise? Are they not the creatures of the Assembly? But there is a magic terror in the sound of a Counsellor. Call a man an Assemblyman, or a Censor, and he becomes an innocent creature, though you invest him with the despotism of an eastern monarch. If the Council are dependant upon the Assembly, it follows of course that the Judges, who are appointed by the Council, are likewise dependant upon them. But in order more fully to secure their dependance upon the will of the Assembly, they are obliged to hold their salaries upon the tenure of their will. In vain do they hold their commissions for seven years. This is but the shadow of independance. They cannot live upon the air, and their absolute dependance upon the Assembly gives that body a transcendent influence over all the courts of law in the State. Here then we have discovered the legislative, executive and judicial powers of the State all blended together.---The liberty, the property and life of every individual in the State are laid prostrate by the Constitution at the feet of the Assembly. This combination of powers in one body has in all ages been pronounced a tyranny. To live by one man's will became the cause of all men's misery; but better, far better, would it be to live by the will of one man, than to live, or rather to die, by the will of a body of men. Unhappy Pennsylvania! Methinks I see the scales of justice broken in thy courts.---I see the dowry of the widow and the portion of the orphans unjustly taken from them, in order to gratify the avarice of some demagogue who rules the Assembly by his eloquence and arts.--- I see the scaffolds streaming with the blood of the wisest and best men in the State.---I see the offices of government-----But the prospect is too painful, I shall proceed to take notice of some other parts of the Constitution.

It was not sufficient to contaminate justice at its fountain, but its smallest streams are made to partake of impurity by the Convention. In the 30th section of the Constitution "all Justices of the Peace are to be elected by the freeholders of each city and county." The best observations

observations that can be made on this part of the Constitution is to inform the public, that not above one half the people of the State chose magistrates agreeable to the laws of the Assembly for that purpose; that more than one half of those that were chosen have refused to accept of commissions, and that many of those who act are totally disqualified from the want of education or leisure for the office.---It has been said often, and I wish the saying was engraven over the doors of every statehouse on the Continent, that "all power is *derived* from the people," but it has never yet been said that all power is *seated* in the people. Government supposes and requires a delegation of power: It cannot exist without it. And the idea of making the people at large judges of the qualifications necessary for magistrates, or judges of laws, or checks for Assemblies proceeds upon the supposition that mankind are all alike wise, and just, and have equal leisure. It moreover destroys the necessity for all government. What man ever made himself his own attorney? And yet this would not be more absurd than for the people at *large* to pretend to give up their power to a set of rulers, and afterwards reserve the right of making and of judging of all their laws themselves. Such a government is a monster in nature. It contains as many Governors, Assemblymen, Judges and Magistrates as there are freemen in the State, all exercising the same powers and at the same time. Happy would it be for us, if this monster was remarkable only for his absurdity; but, alas! he contains a tyrant in his bowels. All history shews us that the people soon grow weary of the folly and tyranny of one another. They prefer one to many masters, and stability to instability of slavery. They prefer a Julius Cæsar to a Senate, and a Cromwell to a perpetual parliament.

I cannot help thinking a mistake lays rather in words than ideas when we talk of the rights of the people. Where is the difference between my chusing a Justice of Peace, and my chusing an Assemblyman and a Counsellor, by whose joint suffrages a Governor is chosen, who appoints a Justice for me? I am still the first link of the sacred chain of the power of the State. But are there no cases in which I may be bound by acts of a single, or of a body of magistrates in the State, whom I have had no hand in chusing? Yes, there are. Here then I am bound contrary to the principles of liberty (which consist in a man being governed by men chosen by himself), whereas if all the magistrates in the State were appointed by the Governor, or executive part of the State, it would be impossible for me to appear before the bar of a magistrate any where who did not derive his power *originally* from me.

By the 5th section all militia officers below the rank of a Brigadier General are to be chosen by the people. Most of the objections that have been mentioned against magistrates being chosen by the people, apply with equal force against the people's chusing their military officers. By the militia law of this State we find the soldier ceases to be commanded by the officer of his choice as soon as he comes in the field. He might as well be commanded by an officer of another State as by one of his own State, for whom he did not vote. Had he been appointed

pointed by the executive power of the government, he might have looked upon him originally as the creature of his own power, and might have claimed his care in the camp, from his influence at elections, in moving those springs in government, from which he derived his commission. But the unsuitableness of this part of the Constitution to the genius of the people of Pennsylvania, will appear in the strongest point of light, from attending to the two following facts: 1st: Most of the irregularities committed by the militia, that were in service last year, were occasioned by that laxity of discipline, which was introduced and kept up by officers holding their commissions by the breath of the people: And 2dly, Above one half of the State have refused or neglected to chuse officers, agreeably to the recommendation of the Assembly.----And even in many of those places, where elections for officers have been held, Colonels have been chosen by forty and Captains and Subalterns by only four or five votes.

In the 22d section of the Constitution it is said, " every officer of the state, whether judicial or executive, shall be liable to be impeached by the General Assembly, before the President and Council, either when in office or after his resignation or removal for maladministration." Why is a man in this case to be deprived of a trial by jury? and what is the reason that no *time is fixed* for the commencement of this impeachment after resignation or removal for maladministration? A judicial or military officer may be innocent, and yet, from the delay of his trial for six or seven years, he may be deprived by death or otherways of the vouchers of his innocence. Woe to the man that ever holds one of the high offices of the State of Pennsylvania! He must ever, after his resignation, hold his life at the pleasure of the orator who rules the Assembly. The least mark of disrespect shewn to him, or to any of the Assembly, rouses the Constitution and laws of his country against him; and perhaps, after an interval of twenty or thirty years conscious integrity, his grey hairs are dragged with sorrow to the grave. Let not this be thought to be too high a picture of this part of the Constitution of Pennsylvania. It is a picture of human nature in similar circumstances, in every age and country. Men possessed of unlimited and uncontrolled power are beasts of prey.

But, is there no power lodged in the Constitution to alter these imperfections? Has our Convention monopolized all the wisdom of succeeding years, so as to preclude any improvements being made in the infant science of government? Must we groan away our lives in a patient submission to all the evils in the Constitution which have been described? Let the 47th and last section of the Constitution answer these questions. By this section it is declared, that after the expiration of seven years, there shall " be chosen two men from each city and county, (a majority of whom shall be a quorum in every case, except as to *calling a Convention*) who shall be called a Council of Censors, and who shall have power to call a Convention within two years after their sitting, if there appears to them an absolute necessity of amending any article of the Constitution which may be defective, explaining such

as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people." From this paragraph it is evident, that the Constitution was thought to be the perfection of human wisdom, and that the authors of it intended that it should last for ever. Every section of the Constitution, I believe, was determined by a *majority* of the Members of the Convention, and in the 12th section of the Constitution we find, that if only two-thirds of the people concur in the execution of it, the members of Assembly chosen by them, are to "possess all the powers of the General Assembly as fully and amply as if the whole were present." This is strictly agreeable to the principles of good government; but, why are these principles to be trampled upon, when the great question is to be agitated, whether the Constitution shall be altered? For, unless every county and city in the State concur in electing Censors, and unless *two thirds* of them agree in calling a Convention, there is no possibility of obtaining an alteration of a single article of the Constitution. If the Assembly had not taught us that it was neither treason nor perjury to break the Constitution, I am sure it would have remained inviolate for ever; for I am persuaded that several of the counties would have refused to have chosen Censors. But suppose they had, if only one short of *two thirds* of them refused to agree in the measure, we could have no Convention. The minority would give laws to a majority. A solecism in government! But there is no end to the tyranny and absurdity of our Constitution.

The Council of Censors have not yet finished their business. They are empowered by the Constitution "to enquire, whether the *Constitution* has been preserved *inviolat*e in *every* part? and whether the legislative and executive branches of government have performed their duty, as guardians of the people; or assumed to themselves, or exercised *other* or greater powers than they are entitled to by the Constitution: They are also to enquire, whether the public taxes have been justly laid and collected in all parts of this commonwealth;---in what manner the public monies have been disposed of, and whether the laws have been duly executed: For these purposes they shall have power to send for persons, papers and records; they shall have authority to pass public censures, and to recommend to the legislature, the repealing such laws as appear to them to have been enacted contrary to the principles of the Constitution: These powers they shall continue to have for, and during the space of one year, from the day of their election, and no longer."

Is this the commission of a Spanish viceroy? or is it an extract from an act of the British Parliament, teeming with vengeance against the liberties of America?---No.---It is an epitome of the powers of the Council of Censors established by the late Convention of Pennsylvania. Innocence has nothing to fear from justice, when it flows through the regular channels of law; but where is the man who can ensure himself a moment's safety from a body of men invested with absolute power for one whole year to censure and condemn, without judge or jury,

every individual in the State. I shall suppose the Council to consist of a majority of those Members of Assembly, who took the oath of allegiance to the Constitution, and who voted, that no officer should be excused from taking it, who accepted of a militia-commission under the authority of this State. I shall suppose them assembled for the business of their office. The work of an age is to be performed in a single year.----Methinks I see such of those worthy gentlemen as are living, who, for the sake of union, consented to dispense with the oath of allegiance to the Constitution, led like criminals to their bar.----I hear peals of wrath denounced against them. I see those virtuous gentlemen, who composed the Executive Council in the year 1777, summoned to appear at their tribunal, to answer for their having abdicated the duties of their office, by an adjournment, at a time when the State was threatened with an invasion. In vain they plead, that the Constitution had invested them with no power for the defence of the State. Their names and their families are branded with infamy by a "public censure." I see hundreds and thousands coming, one after another, before the Council, to be censured for refusing to chuse magistrates and militia-officers, agreeably to the laws of the Assembly. But who are they who are dragged with so much violence to the inquisitorial tribunal? They are a number of citizens who prayed for some alterations to be made in the Constitution. In vain they plead the obligations of reason and conscience against submitting to the government. In vain they plead their zeal and services in the common cause of America. It is all to no purpose. They recommend to the Assembly to impeach them for high treason. They are condemned as traitors, and the streets swim with their blood.---Good heavens! where was the mild genius of Pennsylvania, when this part of the Constitution obtained the assent of the Convention?-----Spirit of liberty, whither wast thou fled?---

But perhaps the Constitution has provided a remedy for its defects, without the aid of the Council of Censors? No---this cannot be done; for every Member of Assembly, before he takes his seat, is obliged, by the 10th section of the Constitution, to swear that he will not "do nor consent to any act whatever, that shall have a tendency to lessen or abridge their rights and privileges as declared *in the Constitution of this State*," as also, "that he will not directly or indirectly do or consent to any act or thing prejudicial or injurious to the Constitution or Government thereof, as *established by the Convention*," agreeably to the 40th section of the Constitution. These oaths of infallibility and passive obedience to the form of the Constitution, effectually preclude every man, who holds an office under it, from attempting to procure the least amendment in any part of it.* It is a mere quibble upon words

* *That it was the design of the Convention, that the Constitution should not be touched by any power but a Convention to be called by the Council of Censors, appears from the oath contained in the 40th section, being required by one of their ordinances as the only condition upon which an Elector could*

words to say, that a man may mend the Constitution, without "doing any thing prejudicial or injurious to it." The Convention did not intend any such construction to be put upon their oaths, and hence we find in the introduction to the Constitution, they "declare the frame of government to be the Constitution of this commonwealth, and to remain in force therein *for ever, unaltered*, except in such articles as shall hereafter, upon experience, be found to require improvement, and which shall, by the same authority of the people fairly delegated, as this *frame of government* directs, be amended and improved." Now we know, that the frame of government forbids the least amendment being made in the Constitution in any other way than by the recommendation of a Council of Censors.

Had the Constitution appeared to me to have been unexceptionable in every part, and had it been the result of the united wisdom of men and angels, I would not have taken an oath of passive obedience to it, for seven or nine years. The constant changes in human affairs, and in the dispositions of a people, might render occasional alterations, in that time, necessary in the most perfect Constitution. But to take an oath of allegiance to a Constitution,---full of experiments,---a Constitution that was indeed a new thing under the sun,---that had never been tried in some of its parts in *any* country,---and that had produced misery in other of its parts in *every* country.---I say to swear to support or even to submit, for seven or nine years, to such a Constitution, is to trifle with all morality, and to dishonour the sacred name of God himself.

What would you think of a man, who would consent to shut his eyes, and swallow a quantity of food that had never before been tasted by a human creature, and swear at the same time, that if it should disorder him in ever so great a degree, he would take nothing to relieve himself for eight and forty hours? Such a man would be wise, compared with the man who takes an oath of allegiance to the Constitution of Pennsylvania.

It is to no purpose to talk here of the many excellent articles in the Bill of Rights; such as religious toleration,---the habeas corpus act,---trials by juries,---the rotation of office, &c. None of them can flourish long in the neighbourhood of a single Assembly, and a Council of Censors possessing all the powers of the State.-----These inestimable privileges in the Constitution of Pennsylvania resemble a tree loaded with the most luscious fruit, but surrounded with thorns, in such a manner, as to be for ever inaccessible to the hungry traveller.

Perhaps, while the government is upon its good behaviour, and

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while

vote for an Assemblyman. Strange! that men should call God to witness their determination to support a government, which a majority of them had not seen, and which even the minority of them did not understand or disliked! But, for the honour of the State it should be recorded, that not above 1500 of the 2500, who voted for the Assembly, took the oath required by the ordinance of the Convention.

while the passions of the State are directed against a cruel and common enemy, we may not experience all the calamities that have been demonstrated to flow from the Constitution.-----But the revolution of a few years, and the return of peace, will most certainly render Pennsylvania, under her present Constitution, the most miserable spot upon the surface of the globe.

I believe all the Members of the late Convention were true Whigs, and aimed sincerely at forming a free and happy government: But, I am sure, that if Filmar and Hobbes had sat among them, they could not have formed a government more destructive of human happiness; nor could Lord North or General Howe have formed one more destructive of union and vigour, in our public affairs, than the present Constitution of Pennsylvania.

It is one thing to understand the *principles*, and another thing to understand the *forms* of government. The former are simple; the latter are difficult and complicated. There is the same difference between principles and forms in all other sciences. Who understood the principles of mechanics and optics better than Sir Isaac Newton? and yet Sir Isaac could not for his life have made a watch or a microscope. Mr. Locke is an oracle as to the *principles*, Harrington and Montesquieu are oracles as to the *forms* of government.

LETTER IV.

A Question very naturally arises from taking a review of the tyranny of the government of Pennsylvania, What measures shall be taken to amend them? There can be but two answers to this question. 1st. To submit to the Constitution for the present, till a peace with Great-Britain will give us leisure to make a better; or, 2dly, to call a Convention immediately for the purpose of making a new Constitution. I believe the State is divided only about these two things; for the party who believe the government to be a *good* one, is too inconsiderable to be noticed in this place.

I beg leave to offer a few objections to our *submitting* to the Constitution, and shall afterwards endeavour to obviate the objections that have been made to the immediate calling of a Convention, for the purpose of altering and amending it.

There is the utmost danger to the State of Pennsylvania in a temporary submission to the Constitution from the following causes, 1. The government is a tyranny. The moment we submit to it we become slaves. We hold every thing dear to us in society upon the tenure of the will of a single man in a single Assembly. Perhaps the mark of the beast may not be fixed immediately upon us, but the contract is made, and we are sold, together with our posterity, to be hewers of wood and drawers of water for ever. 2. The Constitution cannot be executed in part without being *broken*. Now there cannot be a more dangerous precedent in a free country, than a legislature violating in a single

single article even the *forms* of a Constitution. 3 The present government will not draw forth the wisdom nor strength of the State, nor afford that assistance to our Sister States which is expected from us in the present contest with Great-Britain. Wise and good men every where refuse to accept of the first offices in the government. The militia law is only partially executed. We have no courts of justice open for the sequestration or confiscation of Tory property; and, lastly, we shall never be able under the present government to contribute our share towards sinking the Continental debt by taxes. There is not force enough in the *whole* State to draw taxes from a *single* county against their consent.† Alas! we are on the brink of ruin. Our State has lifted a knife to her throat, and is about to undo herself by a hasty and ill-judged exercise of her own power. Our enemies are exulting, and our friends are weeping over our alarming situation. Our ancestors look down, and our posterity look up to us for a happier Constitution. We are united with our Sister States in a bloody and expensive war. The liberty of the whole world is the price for which we fight. Human nature looks to us to avenge the mighty ills she has suffered from the tyrants of the old world. She has already dropped a tear of joy upon the prospect of recovering among us her first and original dignity. A *good government* is an engine not less necessary to accomplish these glorious purposes than ammunition and *fire-arms*. The way of duty is plain. Let a Convention be chosen, to alter and amend the government. This measure alone will restore vigor and union to Pennsylvania. Say not, my dear countrymen, THIS IS NOT THE TIME, THE ENEMY ARE AT OUR GATES, LET US FIRST REPEL THEM. Look at our militia on a field day---see the attempts of the friends to the Constitution to open our courts---hear the complaints and murmurs of the people. They all proclaim that now is the time for altering our Constitution. No confusion can arise from it. The gentlemen in the opposition declare their determination to support the present Assembly in the execution of every law necessary for the safety and defence

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† The gentlemen in the opposition to the government have constantly prayed, that the Constitution might be referred to the arbitration of a Convention, and have declared their willingness to submit to, or concur in the execution of it, if it should be confirmed by a representation of the people fairly chosen. I am sorry to find upon the *Journals of the Assembly*, an address from a battalion of militia in Chester county, to the Honourable House, assuring them, that “ they will support the present government with their lives and fortunes.” Such addresses indicated the weakness, and foreboded the present contemptible situation of the court of Britain. They were presented in times similar to our own, viz. when the American colonies were upon their knees to the throne, praying to be governed by their own representatives, and to be delivered from IMPENDING slavery. But it is characteristic of the present Constitution, that, in the first year of its execution, the journals of our rulers were stained with threats of bloodshed, against men who only petitioned for a redress of grievances.

fence of the State, and above all in the execution of the militia and test laws. They have no interest unconnected with yours. They see with the same distress as you do the Tories triumphing in our disunion. Be not deceived. The Tories are not enemies to the present government; they enjoy the benefits of its weakness, and there is good authority to say they have *secretly* helped to carry it into execution. Let us beware of being imposed upon by the popular cry of the *necessity of the times*. When the Dissenters in Virginia and South Carolina prayed for the abolition of the Episcopal establishment in those States, the High-Churchmen acknowledged that their demands were just, but said, that *this was not the time* for attending to them, and that such a change in the government would throw all things into confusion. The demands were notwithstanding complied with, and an union unparalleled in former times was immediately produced in those States. When a declaration of independance last summer appeared to be the only measure that could save America, the Tories and moderate men acknowledged the justice of our separation from Great-Britain, but said, "This is not the time." The event shewed that the time was come, for, exclusive of the advantages we have gained from it in foreign Courts, it served to precipitate the timid, the doubtful and the disaffected characters from their mixture with the real Whigs, and although it lessened the numbers in the opposition, it added to their strength by producing union and decision among them. To delay justice (has been emphatically said) is to deny it. In like manner to *delay* liberty is to *take* it away.

The Convention of New-York formed their government within the reach of the thunder of the enemy's cannon, and while one half of their State was in their possession. Is our situation more dangerous than it was last year? The members of the late Convention were chosen on a day when the Associators of the whole State were in motion. The Constitution was made while above 5000 of them were in the field. The sense of the people was not *asked* upon the subject of the Constitution; but it was *given* in the most public manner. No more than 1500 freemen voted for its being executed, for that number only took the oath of allegiance to the Constitution at the election in November. Let us talk no more then of the "*necessity of the times*." This is the stale apology at St. James's for all the crimes of the present reign and for all the ravages and bloodshed we have witnessed in America. The State of Massachusetts Bay are preparing against an invasion; they expect General Burgoyne every hour in their harbours with a powerful army, and yet in a Boston paper, of the 15th of May, I find the following resolution of their Assembly and Council,

STATE OF MASSACHUSETTS BAY.

In the HOUSE of REPRESENTATIVES, May 5, 1777.

"*Resolved*, That it be, and hereby is recommended to the several towns and places in this State, impowered by the laws thereof, to send Members to the General Assembly, that, at their next election of a Member or Members to represent them, they make choice of men, in whole

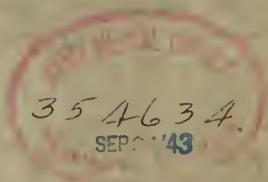
whose integrity and abilities they can place the greatest confidence; and, in addition to the common and ordinary powers of representation, instruct them in one Body with the Council, to form such a Constitution of Government, as they shall judge best calculated to promote the happiness of this State; and when compleated, to cause the same to be printed in all the *Boston* News-Papers, and also in Hand-Bills, one of which to be transmitted to the Selectmen of each town, or the Committee of each plantation, to be by them laid before their respective towns or plantations, at a regular meeting of the inhabitants thereof, to be called for that purpose; in order to its being, by each town and plantation, duly considered. And a return of their approbation or disapprobation to be made into the Secretary's Office of this State, at a reasonable time to be fixed on by the General Court, specifying the numbers present in such meeting, voting for, and those voting against the same: And if, upon a fair examination of the said returns by the General Court, or such Committee as they shall appoint for that purpose, it shall appear, that the said Form of Government is approved of by at least two thirds of those who are free, and twenty one years of age, belonging to this State, and present in the several meetings, then the General Court shall be empowered to establish the same as the Constitution and Form of Government of the State of *Massachusetts Bay*, according to which the inhabitants thereof shall be governed in all succeeding generations, unless the same shall be altered by their own express direction, or that of at least two thirds of them. And it is further recommended to the Selectmen of the several towns, in the return of their precepts for the choice of Representatives, to signify their having considered this Resolve, and their doings thereon." Wife people! happy State of *Massachusetts Bay*!

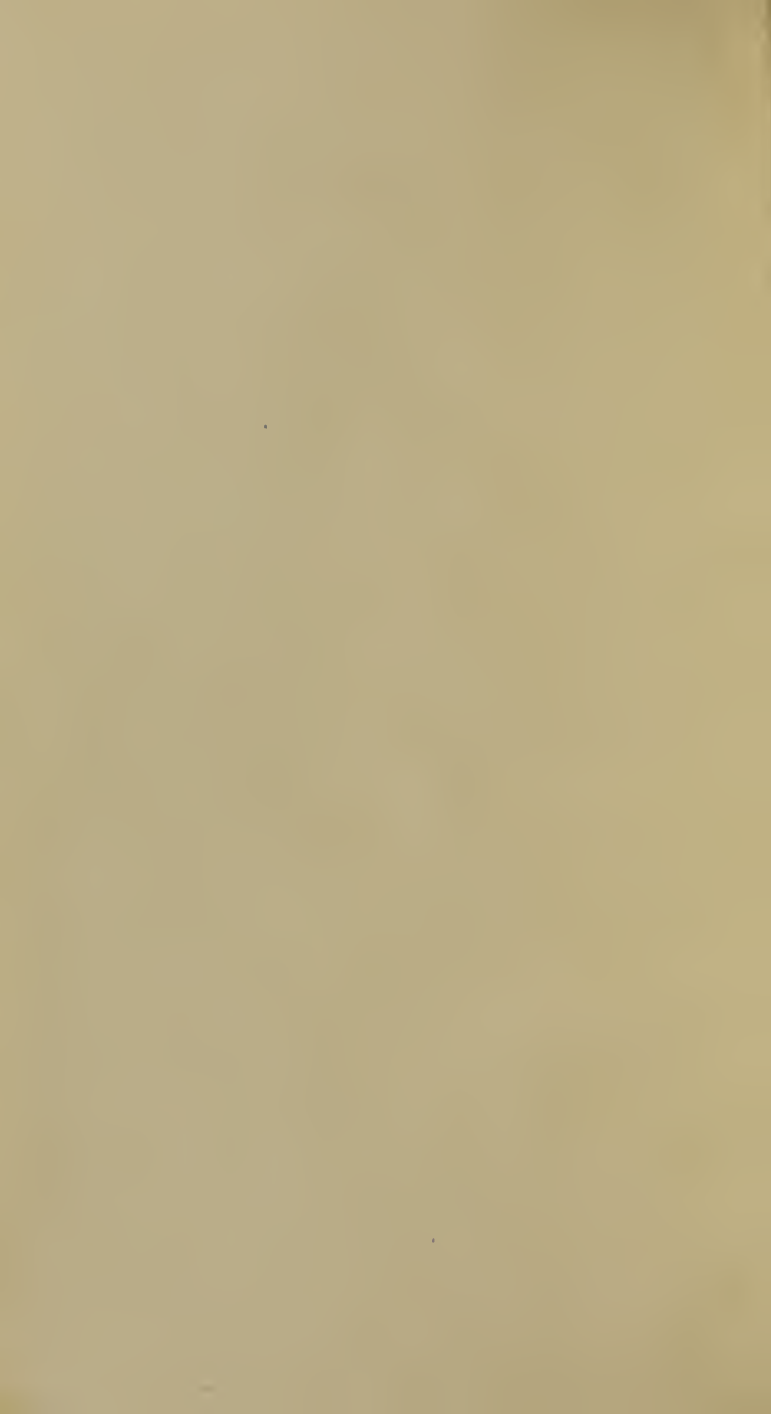
But further, recollect, my dear countrymen, our conduct upon reading the resolution of the Honourable Congress of the 15th of May, 1776. We seized it as a Warrant that proclaimed liberty to us and our posterity for ever. It was said by some people at that time, "Let the Assembly execute that resolution;" but we spurned the advice, and we acted like men. We said, that the "Assembly was not chosen by a majority of votes in the State," owing to the inequality of our representation, and that they wanted the "confidence of the people." We thought nothing then of the loss of time occasioned by the meeting of a Conference of Committees, to settle the mode and time of chusing a Convention. The delay of months, the distractions of the State, and the danger of an invasion, were thought to be trifling when compared with the prospect of a good Constitution, that should *immediately* collect and exert the Whig strength of the State.

Thus have I finished my observations upon the Constitution of Pennsylvania. I have taken notice only of its most essential defects, and have aimed to discuss them with candour. The occasional remarks upon the proceedings of the Assembly, are to be charged entirely to the faults of the Constitution.--I believe the gentlemen in power have nothing in view but the freedom and independance of the State; and
such

such have been the zeal and integrity of many of them in the pursuit of those great objects, that it gives me pain to reflect, that I have been obliged to differ from them in the best means of obtaining them.

With this declaration I shall close my letters to the people of Pennsylvania. Accept thou dear asylum of my ancestors, nurse of my infancy, protectress of my childhood, and generous rewarder of the toils of my youth, accept of these humble efforts to restore thee to freedom and happiness! If I have laboured in vain, I shall henceforth mourn in secret only over my beloved country, and lament the day that I was born a Pennsylvanian.





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